

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FLOYD D. MARLOW,

Petitioner,

v.

Case No. 05-C-824

CATHERINE J. FARREY

Respondent.

DECISION AND ORDER GRANTING PETITIONER'S MOTION TO LIFT STAY AND
ABEYANCE (DOC. # 35), DENYING AS MOOT RESPONDENT'S MOTION TO
COMPEL (DOC. # 34), AND SETTING BRIEFING SCHEDULE

Floyd D. Marlow filed a petition for writ of habeas corpus in the Eastern District of Wisconsin on August 3, 2005. It was transferred to this court on January 6, 2006, and the court determined that only three of his claims were exhausted: (1) there was insufficient evidence to support his conviction; (2) the court erred in denying his motion to sever from a co-defendant; and (3) the trial court improperly denied his motion to strike a juror. Marlow's failure to raise the remaining claims, including a due process violation, improper jury instructions, and ineffective assistance of counsel, had resulted in procedural default. This court entered an order and judgment denying Marlow's motion to hold his petition for writ of habeas corpus in abeyance and denied the petition for writ of habeas corpus. The Seventh Circuit Court of Appeals vacated the judgment with instructions to issue a stay and to permit Marlow to exhaust his claims in state court. Accordingly, this court granted Marlow's request for a stay and abeyance and allowed him to exhaust his claims in state court.

On July 22, 2008, respondent filed a motion to compel Marlow to apprise the court respecting the status of his case or risk dismissal for lack of prosecution. At that time, it appeared that Marlow had not exhausted his claims regarding ineffective assistance of counsel because he failed to petition for supreme court review. In response, Marlow asked the court to lift the stay and abeyance and allow him to proceed on his Sixth Amendment claims which were procedurally barred, as well as the exhausted claims.

Based on the Seventh Circuit's order vacating the prior judgment and Marlow's motion to lift the stay and abeyance,

IT IS ORDERED that Marlow's motion to lift stay and abeyance order is granted.

IT IS FURTHER ORDERED that the respondent's motion to compel is denied as moot.

IT IS FURTHER ORDERED that Marlow shall file his brief in support on his petition on or before October 14, 2011, clearly identifying each claim and its treatment by the state courts, and asserting any bases for overcoming procedural default.

IT IS FURTHER ORDERED that the respondent shall file its response on or before November 14, 2011.

IT IS FURTHER ORDERED that Marlow's reply is due on or before December 5, 2011.

Dated at Milwaukee, Wisconsin, this 14th day of September, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE